UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLANTIC VEAL & LAMB, INC.

Cases 29-CA-24484

29-CA-24619 29-CA-24669

and :

:

KNITGOODS WORKERS' UNION LOCAL 155, UNION OF NEEDLETRADES,

INDUSTRIAL & TEXTILE EMPLOYEES, AFL-CIO INTERNATIONAL UNION, AFL-CIO-CLC

RESPONDENT ATLANTIC VEAL & LAMB, INC.'S MOTION FOR RECONSIDERATION OF THE BOARD'S SECOND SUPPLEMENTAL DECISION AND ORDER¹

Now comes the Respondent, Atlantic Veal & Lamb, Inc., and, pursuant to Rule 102.48(d)(2) of the Board's Rules and Regulations, respectfully moves this Honorable Board to Reconsider its Second Supplemental Decision and Order in the above-referenced matter. The reasons for this Motion are more fully set forth in the accompanying Memorandum in Support attached hereto.

Respectfully submitted,

s/Steven B. Chesler
Steven B. Chesler
Attorney at Law
966 Cherokee Rd., Suite 202
Louisville, KY 40204
216-849-4513

Email: sches415@hotmail.com

¹ In presenting this Motion, Respondent emphasizes that it disagrees with the Board's analysis and conclusions awarding Ogando in excess of \$70,000 in backpay and reserves the right to challenge this decision in an appropriate forum.

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,

MEMORANDUM IN SUPPORT OF RESPONDENT ATLANTIC VEAL & LAMB, INC.'S MOTION FOR RECONSIDERATION OF THE BOARD'S SECOND SUPPLEMENTAL DECISION AND ORDER

On June 27, 2012, the Board issued its Second Supplemental Decision and Order in this case, reversing the Administrative Law Judge's decision that Jeorge Ogando had willfully concealed earnings from the General Counsel and denying Ogando backpay for the period of January 2002 through June 7, 2004. In reversing the ALJ, the Board found that the Respondent had not met its burden of proving that Ogando had willfully concealed earnings during the aforementioned period of time. Member Hayes dissented from the majorities' decision; however, both the majority and dissent were in agreement that Ogando is a liar. Page three of the majorities' Opinion and Order in the case at bar states that, "Here, there is no doubt that Ogando lied to someone about his earnings." Member Hayes' dissent is even more specific, "If he [Ogando] was willing to game the system by over-stating income in order to obtain a bank loan, he could be just as willing to understate income in order to minimize his tax obligation or to maximize his backpay award." As will be discussed below, Respondent requests that the Board reconsider its decision and deny backpay to Ogando *in toto*.

In the underlying proceeding in this case wherein Ogando was found to be the victim of

unlawful discrimination (342 NLRB 418 (2004)) one of the key issues was Ogando's credibility.

Specifically, the ALJ credited Ogando's testimony over that of Respondent's owner, Phillip

Peerless, and Ogando's supervisor, Eddie Cruz. *Id.* at 419, 426. Given what is now known

about Ogando's proclivity to lie, it is doubtful that anyone would find him to be a credible

witness. After all, if Ogando was willing to "game the system" to make his income appear either

larger or smaller depending on the inquiring entity, he would no doubt be willing to lie to bolster

his claim that he was unlawfully discriminated against and be awarded backpay. Consequently

the Board should reconsider its decision that Ogando was unlawfully terminated thereby

obviating the need to award him backpay.

CONCLUSION

For the foregoing reasons, Respondent requests this Honorable Board to reconsider its

original decision that Ogando's discharge violated the Act and as a fortiori, deny Ogando

backpay.

Respectfully submitted,

s/ Steven B. Chesler

Steven B. Chesler Attorney at Law 966 Cherokee Rd., Suite 202 Louisville, KY 40204

216-849-4513

Email: sches415@hotmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion for Reconsideration was served this 25th day of July, 2012 upon:

Kathy Drew King (served via email and U.S. Mail) Counsel for the General Counsel, Region 29 Two Metro Tech Center, Fifth Floor Brooklyn, NY 11201-4201 Kathy.Drew-King@NLRB.gov

And

Leila M. Maldonado, Esq. (served via U.S. Mail) 111 Livingston Street, Suite 1110 Brooklyn, NY 11201

> s/ Steven B. Chesler Steven B. Chesler